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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,937	11/28/2001	David M. Anderson	05900002AA	7327

7590 08/17/2004

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Reston, VA 20190

EXAMINER
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WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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09/994937

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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7/25/04

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 5/17/04

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire \_\_\_\_\_ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-56 is/are pending in the application.  
Of the above, claim(s) 20-26, 45-51, 54, 55 is/are withdrawn from consideration.  
☐ Claim(s) \_\_\_\_\_ is/are allowed.  
☒ Claim(s) 1-19, 22-44, 52-53, 56 is/are rejected.  
☐ Claim(s) \_\_\_\_\_ is/are objected to.  
☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892  
☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 10/14/03, 2/10/04  
☐ Interview Summary, PTO-413  
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948  
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 1617

Applicant's election without traverse of Group I in the reply filed on 5/17/04 is acknowledged.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 27-44, 56 rejected under 35 U.S.C. 103(a) as being unpatentable over Shively in view of Benet et al and Yau.

Shively et al teach an emulsion containing taxol (Title). Oral administration is disclosed column 9 lines 51-94.

Benet et al teach essential oils to increase the bioavailability of pharmaceutical compounds (Title). Spearmint (claim 6) and taxol (claim 5) are disclosed.

Yau et al teach Gentisic acid as a radio protectant (column 29 lines 29-30). Taxol is disclosed (column 9 line 28).

It would have been obvious to one of ordinary skill to add an essential oil to the composition of Shively et al to achieve the beneficial effect of increasing the bioavailability of taxol in view of Benet et al and to further add Gentisic acid as a radio protectant in view of Yau et al. It is well-known, even to the layman, that <sup>chemotherapy</sup> ~~chemotherapy~~ is given in <sup>conjunction</sup> ~~communication~~ with radiation therapy. Thus, it would be an obvious expedient to add a radioprotectant<sup>0</sup> to protect taxol in the Shively et al composition.

No claims allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Webman whose telephone number is (571) 272-0633. The examiner can normally be reached on Monday to Friday 9 Am 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Webman/LR  
July 27, 2004

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JULY 27 2004  
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